Dato' Toh Kian Chuan v Swee Construction and Transport Company (Malaya) Sdn Bhd

HIGH COURT (JOHOR BAHRU) — PETITION NO 28-129 OF 1994
MOHD GHAZALI J
22 DECEMBER 1995

Companies and Corporations *— Members' rights — Oppression — Petition by minority shareholder alleging that directors misled members including petitioner to agree to sale of company's asset — Whether sale dilutes value of petitioner's shareholding — What amounts to oppression — Whether alleged acts of oppression to be looked at as a whole or in isolation — Companies Act 1965 s 181(1)*

Companies and Corporations *— Resolutions — Resolution by majority at extraordinary general meeting to revive rescinded agreement to sell company's asset — Allegation of sale below market value — Allegation that resolution to revive rescinded agreement irrational — Whether duty of the courts to inquire into its rationality — Companies Act 1965 s 132C*

Evidence *— Standard of proof — Fraud — Beyond reasonable doubt — General allegation insufficient*

The respondent company was incorporated in 1959. Its present authorized share capital is RM20,000,000, divided into 200,000 shares of RM100 each. Its paid-up capital is RM14,000,000. The petitioner holds 880 shares out of the 140,000 issued and paid-up shares. The respondent company was the owner of three pieces of land situated in the mukim of Senai/Kulai, in the state of Johor, namely, lot 1955, lot 1033 and lot 2604. In 1991, the respondent company sold the said lot 1033, lot 2604 and a part of lot 1955 measuring 173.6 acres, which totalled 506 acres ('the three lots') to Wangsa Idaman Sdn Bhd, a company substantially owned by one Mustapha Buang. The respondent company was thus left with the remaining part of lot 1955 measuring 221.9 acres ('the said land'), which was subsequently issued with a title known as Geran No 40117 lot 27728. Sometime in 1992, Toh Boon Chui ('TBC'), a director of the respondent company, informed the members, including the petitioner, that Mustapha Buang was in a position to apply to the state authority for a change of the category of land use from 'agriculture' to 'building' and 'industry' and for subdivision of the said land. In return, it was agreed that the respondent company would acquire a company called Lembaran Murni Sdn Bhd ('LMSB') which would purchase the said land and consequently issue 40% of its shares to Mustapha Buang and his nominee and the remaining 60% to the nominees of the respondent company. On 15 December 1992, in consideration of RM50,000, the respondent company granted an option to LMSB to purchase the said land at the price of RM60,000 per acre amounting to RM13,314,000. On 17 December 1992, the respondent company passed a resolution to sell the said land to LMSB at the said price of RM13,314,000. In December 1992,

Mustapha Buang and his nominee ('the first party') and five nominees of the respondent company ('the second party') entered into an agreement ('the shareholders agreement') to jointly develop the said land and to jointly incorporate or acquire a company for that purpose. The shareholding was for the first party 40% and the second party 60%. Under the shareholders agreement, the first party undertook to apply for a change of the category of use of the said land from 'agriculture' to 'industry' and 'commercial' and for subdivision. On signing the shareholders agreement, the respondent company executed a power of attorney appointing LMSB as its attorney to prepare, sign and submit the necessary applications to the relevant authorities for the necessary approvals. At a meeting of the respondent company on 5 March 1993, TBC informed the meeting that Mustapha Buang had told him that the approval for the 'conversion' of the said land had been obtained and that he was waiting for approvals for the layout plan and the subdivision. On 6 December 1993, the respondent company entered into an agreement with LMSB to sell the said land to the latter at the said price of RM13,314,000 ('the sale and purchase agreement'). However, at an extraordinary general meeting ('EGM') of the respondent company held on 22 August 1994 it was resolved that the sale and purchase agreement of 6 December 1993 be rescinded. On 30 October 1994, however, the respondent company issued a notice informing its members that an EGM would be held on 14 November 1994 to pass a resolution to revive the rescinded sale and purchase agreement. Prior to the EGM, by a letter dated 7 November 1994 addressed to all the members of the respondent company, the petitioner informed them that the current market value of the said land was RM34,300,000 and that it was irrational for the respondent company to sell it at RM13,314,000 as agreed earlier. In another letter to all the members dated 12 November 1994, the petitioner informed them that they had been supplied with misleading facts with regard to the whole transaction. At the EGM held on 14 November 1994, a resolution was passed by the majority shareholders to revive the rescinded sale and purchase agreement, despite the petitioner's objection. On 13 December 1994 the petitioner, as a minority shareholder, filed this petition claiming that:

(1) TBC had misled the members into believing that Mustapha Buang had obtained the necessary approvals whereas the authorities had granted approval for surrender and re-alienation of the said land to Wangsa Idaman Sdn Bhd on 22 October 1992 but this fact was withheld from the members;

(2) the directors had misled the members with regard to the shareholders agreement dated 12 December 1992 as by then, the authorities had approved the surrender and re-alienation of the said land;

(3) the directors had misled the members into believing that if the sale and purchase agreement were not revived, the respondent company would be sued by Mustapha Buang and LMSB and

that there was a possibility that the government would acquire the said land or that its 'conversion' might be cancelled; and A

(4) the sale of the said land at the price of RM13,314,000 by the respondent company was irrational and had caused a dilution in value of the petitioner's shareholdings.

The petitioner sought principally to set aside the resolution reviving B the rescinded sale and purchase agreement and the agreement itself; and an order that the respondent company purchase his shares and those of any minority shareholder of the respondent company. The respondent company resisted the petition. On behalf of the respondent company, TBC stated that the petitioner failed to disclose that he C was a director of the respondent company from 1968 to 1983 and that he was its chief executive from 1985 till June 1994 when he was removed. As chief executive, the petitioner was privy to every action of the respondent company. TBC contended that the petitioner's non-election as a director of Kian Hong Holdings Pte Ltd, a major shareholder of the respondent company; and his termination as the D chief executive were his real grievances. TBC contended that the final approval for the surrender and re-alienation of the said land was given by the state authority on 10 March 1994, as evidenced by the letter of that date from the State Director for Lands and Mines. The main issue before the court was whether the petitioner had brought himself within the scope of s 181 of the Companies Act 1965 ('the E Act').

Held, dismissing the petition with costs:

(1) For the petitioner to succeed in his application for the said reliefs, he must show that it was the affairs of the respondent F company which were being conducted in an oppressive manner, and that the respondent company had oppressed the minority shareholders, including the petitioner (see p 759B).

(2) The circumstances forwarded by both parties did not even disclose that there was a difference in opinion as to the management of G the respondent company between the petitioner and its directors. The circumstances only disclosed that something was amiss in the relationship between the petitioner and some of the directors, especially TBC, which was then aggravated by the non-election of the petitioner to the board of Kian Hong Holdings Pte Ltd and the termination of his employment as chief executive (see H p 759G).

(3) On the whole, the circumstances and matters complained of by the petitioner did not at all denote that there was oppression within the meaning of s 181(1) of the Act. There was nothing to show that the respondent company's action complained of was I designed to injure the petitioner in his rights as a member. The petitioner had failed to prove that the directors had acted in

disregard of his interest. There was nothing to suggest that the respondent company was not being conducted efficiently by the existing board of directors in the interests of the members, neither was there any violation of the conditions of fair play or any abuse of power being committed by the directors of the respondent company which could amount to oppression. The revival of the rescinded sale and purchase agreement, which was objected to by the petitioner and another minority shareholder, could not amount to oppression when the resolution was passed by a majority of the members. Oppression must be in the form of dishonesty and in the instant case, there was none. The petitioner had also failed to satisfy the court that the resolution to revive the rescinded agreement was not bona fide for the benefit of the respondent company as a whole (see pp 759C and 760C); *Elder & Ors v Elder & Watson Ltd* (1952) SLT 112 followed.

(4) The petitioner's contention that no approval was obtained by Mustapha Buang or LMSB could not be looked at in isolation but other events had to be taken into consideration. The approval for surrender and re-alienation obtained by Wangsa Idaman would fulfill Mustapha Buang's obligation under the shareholders agreement. Final approval was eventually obtained on 10 March 1994 (see pp 750 G–I, 752C and 755D).

(5) He who alleges fraud must clearly and distinctly prove it, and a general allegation of fraud is insufficient. Fraud must be proved beyond reasonable doubt and cannot be based on suspicion and conjecture. The petitioner had failed to forward sufficient particulars of fraud. If there were any, there was a general vagueness in the evidence relating to the alleged fraud (see pp 755F–I and 756A); *Chu Choon Moi v Ngan Sew Tin* [1986] 1 MLJ 34 and *PJTV Denson (M) Sdn Bhd & Ors v Roxy (M) Sdn Bhd* [1980] 2 MLJ 136 followed.

(6) The directors of the respondent company had not misled the members into reviving the sale and purchase agreement. The petitioner was privy to the whole transaction from day one, ie from the day the three lots were sold to Wangsa Idaman Sdn Bhd, and the negotiations and agreements which ensued after TBC informed the respondent company that Mustapha Buang was in a position to get the said land 'converted' and subdivided for the purpose of developing it into an industrial estate right up to the removal of the petitioner as chief executive of the respondent company. He was a member of both the respondent company and LMSB and there was evidence to show that he was aware of the arrangement made between the respondent company and Mustapha Buang who was using Wangsa Idaman Sdn Bhd as a vehicle for the 'conversion' and subdivision of the said land. His contention that the approval was only with regard to surrender

and re-alienation and not by way of 'conversion' and subdivision had no bearing upon his complaint at all as the end result was the same, ie the state government had agreed to the surrender and re-alienation of the said land in the form of several units with the category of land use of 'building' and 'industry'. The approval was, however, subject to several conditions and there was always the possibility of its cancellation. It could not be said that the directors had deliberately capitalized on that possibility to induce the members to agree to the revival of the sale and purchase agreement (see pp 756I and 759D).

(7) The resolution to revive the rescinded sale and purchase agreement was passed by the majority at the EGM. Unless fraud was established, it was not the duty of the courts to inquire into its rationality (see p 757D and I).

[Bahasa Malaysia summary

Syarikat penentang ditubuhkan dalam tahun 1959. Modal yang dibenarkan pada masa ini adalah RM20,000,000 yang dibahagi kepada 200,000 saham RM100 setiap satu. Modal yang terbayar adalah RM14,000,000. Pempetisyen memegang 880 saham daripada 140,000 saham yang dikeluarkan dan terbayar. Syarikat penentang adalah pemilik tiga keping tanah di mukim Senai/Kulai, dalam negeri Johor, iaitu lot 1955, lot 1033 dan lot 2604. Dalam tahun 1991, syarikat penentang menjual lot 1033, lot 2604 dan sebahagian daripada lot 1955 berukuran 173.6 ekar, kesemuanya berjumlah 506 ekar ('tiga lot tersebut') kepada Wangsa Idaman Sdn Bhd, sebuah syarikat yang sebahagian besarnya dimiliki oleh seorang bernama Mustapha Buang. Dengan itu, syarikat penentang hanya tertinggal dengan baki lot 1955 berukuran 221.9 ekar ('tanah tersebut'), yang kemudiannya telah dikeluarkan surat hakmilik dikenali sebagai Geran No 40117 lot 27728. Dalam tahun 1992, Toh Boon Chui ('TBC'), seorang pengarah syarikat penentang, memberitahu ahli-ahli, termasuk pempetisyen, bahawa Mustapha Buang berada dalam kedudukan di mana dia boleh memohon kepada pihak berkuasa negeri untuk mengubah jenis penggunaan tanah daripada 'pertanian' kepada 'bangunan' dan 'industri' dan untuk pecah lot tanah tersebut. Sebagai balasan, ia telah dipersetujui bahawa syarikat penentang akan membeli sebuah syarikat yang dipanggil Lembaran Murni Sdn Bhd ('LMSB') yang akan membeli tanah tersebut dan kemudiannya mengeluarkan 40% daripada sahamnya kepada Mustapha Buang dan penerima namaannya dan baki 60% kepada penerima namaan syarikat penentang. Pada 15 Disember 1992, sebagai balasan sebanyak RM50,000 syarikat penentang telah memberi satu opsyen kepada LMSB untuk membeli tanah tersebut pada harga RM60,000 seekar kesemuanya berjumlah RM13,314,000. Pada 17 Disember 1992, syarikat penentang meluluskan satu ketetapan untuk menjual tanah tersebut kepada LMSB pada harga RM13,314,000 tersebut. Dalam Disember 1992, Mustapha Buang dan penerima namaannya ('pihak

pertama') dan lima orang penerima namaan syarikat penentang ('pihak kedua') mengikat satu perjanjian ('perjanjian pemegang saham') untuk memajukan tanah tersebut bersama dan bersama-sama menubuhkan atau membeli sebuah syarikat untuk tujuan ini. Pemegangan saham adalah bagi pihak pertama 40% dan pihak kedua 60%. Di bawah perjanjian pemegang saham tersebut, pihak pertama telah memberi aku-janji untuk memohon bagi mengubah jenis penggunaan tanah tersebut daripada 'pertanian' kepada 'industri' dan 'perdagangan' dan untuk pecah lot. Pada masa menandatangani perjanjian pemegang saham, syarikat penentang telah menyempurnakan satu surat kuasa wakil yang melantik LMSB sebagai wakilnya untuk menyedia, menandatangani dan membentang permohonan yang patut kepada pihak berkuasa yang berkenaan untuk kelulusan yang diperlukan. Dalam suatu mesyuarat syarikat penentang pada 5 Mac 1993, TBC memberitahu mesyuarat bahawa Mustapha Buang telah memberitahunya bahawa kelulusan untuk 'penukaran' tanah tersebut telah diperolehi dan bahawa beliau sedang menunggu kelulusan untuk pelan susun atur dan pecah lot tanah. Pada 6 Disember 1993, syarikat penentang telah mengikat satu perjanjian dengan LMSB untuk menjual tanah tersebut kepada LMSB pada harga RM13,314,000 ('perjanjian jual-beli tersebut'). Tetapi, di suatu mesyuarat agung luar biasa ('EGM') syarikat penentang pada 22 Ogos 1994, ia telah diputuskan bahawa perjanjian jual-beli 6 Disember 1993 tersebut akan dibatalkan. Walau bagaimanapun, pada 30 Oktober 1994, syarikat penentang telah mengeluarkan satu notis memberitahu ahli-ahlinya bahawa satu EGM akan diadakan pada 14 November 1994 untuk meluluskan satu ketetapan untuk menghidupkan semula perjanjian jual-beli yang telah dibatalkan tersebut. Sebelum EGM tersebut, melalui sepucuk surat bertarikh 7 November 1994 yang dialamatkan kepada kesemua ahli syarikat penentang, pempetisyen memberitahu mereka bahawa harga pasaran semasa tanah tersebut adalah RM34,300,000 dan bahawa adalah tidak rasional untuk syarikat penentang menjualnya pada harga RM13,314,000 seperti yang dipersetujui lebih awal. Dalam sepucuk surat lain kepada semua ahli bertarikh 12 November 1994, pempetisyen memberitahu mereka bahawa mereka telah diberi fakta yang mengelirukan mengenai keseluruhan transaksi tersebut. Dalam EGM pada 14 November 1994, satu ketetapan telah diluluskan oleh majoriti pemegang saham untuk menghidupkan semula perjanjian jual-beli yang telah dibatalkan tersebut, walaupun pempetisyen membantah. Pada 13 Disember 1994, pempetisyen, sebagai pemegang saham minoriti, telah memfailkan petisyen ini menuntut bahawa:

(1) TBC telah mengelirukan ahli-ahli untuk mempercayai bahawa Mustapha Buang telah memperolehi kelulusan yang diperlukan manakala pihak berkuasa telah memberikan kelulusan untuk penyerahan balik dan pemberimilikan semula tanah tersebut kepada Wangsa Idaman Sdn Bhd pada 22 Oktober 1992 tetapi fakta ini telah disembunyikan daripada ahli-ahli;

(2) pengarah-pengarah telah mengelirukan ahli-ahli berkenaan dengan perjanjian pemegang saham bertarikh 12 Disember 1992 kerana pada masa itu, pihak berkuasa telah meluluskan penyerahan balik dan pemberimilikan semula tanah tersebut;

(3) pengarah-pengarah telah mengelirukan ahli-ahli untuk mempercayai bahawa jika perjanjian jual-beli tersebut tidak dihidupkan semula, syarikat penentang akan didakwa oleh Mustapha Buang dan LMSB dan bahawa ada kemungkinan kerajaan akan mengambil tanah tersebut atau 'penukaran' tersebut mungkin dibatalkan; dan

(4) jualan tanah tersebut pada harga RM13,314,000 oleh syarikat penentang adalah tidak rasional dan telah menyebabkan satu pencairan nilai dalam saham pempetisyen.

Pempetisyen menuntut terutamanya untuk mengetepikan ketetapan bagi menghidupkan semula perjanjian jual-beli tersebut dan perjanjian tersebut sendiri; dan satu perintah bahawa syarikat penentang membeli saham beliau dan saham pemegang saham minoriti yang lain syarikat penentang. Syarikat penentang telah menentang petisyen tersebut. Untuk pihak syarikat penentang, TBC mengatakan bahawa pempetisyen telah tidak mendedahkan bahawa beliau adalah seorang pengarah syarikat penentang dari 1968 hingga 1983 dan bahawa beliau adalah ketua eksekutifnya dari 1985 sehingga Jun 1994, apabila beliau diberhentikan. Sebagai ketua eksekutif, pempetisyen adalah privi kepada kesemua tindakan syarikat penentang. TBC mengatakan bahawa ketidaklantikan pempetisyen sebagai seorang pengarah Kian Hong Holdings Pte Ltd, satu pemegang saham besar syarikat penentang, dan pemberhentian beliau sebagai ketua eksekutif adalah sebab sebenar beliau terkilan. TBC mengatakan bahawa kelulusan muktamad untuk penyerahan balik dan pemberimilikan semula tanah tersebut telah diberi oleh pihak berkuasa negeri pada 10 Mac 1994, seperti yang dibuktikan oleh surat yang bertarikh sama daripada Pengarah Tanah dan Galian. Isu utama di hadapan mahkamah adalah sama ada pempetisyen telah membawa dirinya ke dalam lingkungan s 181 Akta Syarikat 1965 ('Akta itu').

Diputuskan, menolak petisyen dengan kos:

(1) Untuk pempetisyen berjaya dalam permohonannya untuk relief tersebut, beliau mesti menunjukkan bahawa ianya adalah urusan syarikat penentang yang dijalankan secara menindas, dan bahawa syarikat penentang telah menindas pemegang saham minoriti, termasuk pempetisyen (lihat ms 759B).

(2) Keadaan-keadaan yang dibentangkan oleh kedua-dua pihak tidak mendedahkan bahawa terdapat perbezaan pendapat tentang pengurusan syarikat penentang di antara pempetisyen dan pengarah-pengarahnya. Keadaan-keadaan hanya mendedahkan bahawa sesuatu yang tidak betul dalam perhubungan di antara pempetisyen dan sebahagian daripada pengarah-pengarah,

terutamanya TBC, yang kemudiannya telah diburukkan oleh ketidaklantikan pempetisyen kepada lembaga Kian Hong Holdings Pte Ltd dan pemberhentian penggajiannya sebagai ketua eksekutif (lihat ms 759G).

(3) Pada keseluruhannya, keadaan-keadaan dan perkara-perkara yang diadu oleh pempetisyen tidak menandakan bahawa terdapat penindasan dalam maksud s 181(1) Akta itu. Tidak terdapat apa-apa yang menunjukkan bahawa tindakan syarikat penentang yang diadu telah dirancang untuk memudaratkan pempetisyen dalam haknya sebagai ahli. Pempetisyen telah gagal membuktikan bahawa pengarah-pengarah telah bertindak dengan tidak mengambil kira kepentingannya. Tidak terdapat apa-apa yang mencadangkan bahawa syarikat penentang tidak dikendalikan dengan cekap oleh lembaga pengarah yang sedia ada demi kepentingan ahli-ahli, juga tidak terdapat sebarang pencabulan syarat-syarat keadilan atau sebarang penyalahgunaan kuasa yang dilakukan oleh pengarah-pengarah syarikat penentang yang boleh dikatakan sama seperti penindasan. Penghidupan semula perjanjian jual-beli tersebut, yang telah dibantah oleh pempetisyen dan seorang lagi pemegang saham minoriti, tidak boleh dikatakan sama seperti penindasan sedangkan ketetapan itu diluluskan oleh majoriti ahli-ahli. Penindasan mestilah dalam bentuk ketidakjujuran dan di dalam kes ini, tidak terdapat apa-apa ketidakjujuran. Pempetisyen juga telah gagal memuaskan mahkamah bahawa ketetapan untuk menghidupkan semula perjanjian yang dibatalkan itu bukanlah bona fide untuk faedah syarikat penentang secara keseluruhan (lihat ms 759C dan 760C); *Elder & Ors v Elder & Watson Ltd* (1952) SLT 112 diikut.

(4) Pengataan pempetisyen bahawa tiada kelulusan diperolehi oleh Mustapha Buang atau LMSB tidak boleh dilihat secara sendirian tetapi perkara-perkara lain juga mesti diambil kira. Kelulusan untuk penyerahan balik dan pemberimilikan semula yang diperolehi oleh Wangsa Idaman akan memenuhi kewajipan Mustapha Buang di bawah perjanjian pemegang saham. Kelulusan muktamad telah akhirnya diperolehi pada 10 Mac 1994 (lihat ms 750 G–I, 752C dan 755D).

(5) Sesiapa yang mengata fraud mesti membuktikannya dengan nyata dan jelas dan pengataan am mengenai fraud tidak mencukupi. Fraud mesti dibuktikan melampaui keraguan munasabah dan tidak boleh berasaskan syak wasangka dan tekaan. Pempetisyen telah gagal memberikan butir-butir yang mencukupi mengenai fraud. Jika ada pun, keterangan yang diberi secara amnya adalah kabur mengenai fraud yang dikatakan (lihat ms 755F–I dan 756A); *Chu Choon Moi v Ngan Sew Tin* [1986] 1 MLJ 34 dan *PJTV Denson (M) Sdn Bhd & Ors v Roxy (M) Sdn Bhd* [1980] 2 MLJ 136 diikut.

(6) Pengarah syarikat penentang tidak mengelirukan ahli-ahli untuk menghidupkan semula perjanjian jual-beli tersebut. Pempetisyen

adalah privi kepada keseluruhan transaksi dari hari pertama, iaitu dari hari tiga lot tersebut dijual kepada Wangsa Idaman Sdn Bhd, dan rundingan dan perjanjian yang berikutan setelah TBC memberitahu syarikat penentang bahawa Mustapha Buang berada dalam kedudukan untuk mendapatkan 'penukaran' dan pecah lot bagi tanah tersebut untuk tujuan memajukannya sebagai satu estet perindustrian sehingga pemberhentian pempetisyen sebagai ketua eksekutif syarikat penentang. Beliau adalah ahli kedua-dua syarikat penentang dan LMSB dan terdapat bukti yang menunjukkan bahawa beliau mempunyai pengetahuan mengenai persetujuan di antara syarikat penentang dan Mustapha Buang, yang menggunakan Wangsa Idaman Sdn Bhd sebagai jentera untuk 'penukaran' dan pecah lot tanah tersebut. Pengataan beliau bahawa kelulusan hanyalah untuk penyerahan balik dan pemberimilikan semula dan bukan 'penukaran' dan pecah lot tanah tidak berasas dalam aduannya kerana hasil akhir adalah sama, iaitu kerajaan negeri telah bersetuju kepada penyerahan balik dan pemberimilikan semula tanah tersebut dalam bentuk beberapa unit dengan jenis penggunaan tanah 'bangunan' dan 'industri'. Kelulusan itu, namun demikian, adalah tertakluk kepada beberapa syarat dan sememangnya terdapat kemungkinan bahawa ia boleh dibatalkan. Tidaklah boleh dikatakan bahawa pengarah-pengarah telah mengambil kesempatan daripada kemungkinan itu untuk mendorong ahli-ahli supaya bersetuju kepada penghidupan semula perjanjian jual-beli tersebut (lihat ms 756I dan 759D).

(7) Ketetapan untuk menghidupkan semula perjanjian jual-beli yang dibatalkan tersebut telah diluluskan oleh majoriti di EGM. Kecuali jika fraud dibuktikan, bukanlah menjadi tugas mahkamah untuk menyoal kerasionalannya (lihat ms 757D dan I).]

Notes

For cases on members' rights, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 188–219.

For a case on resolutions, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) para 276.

Cases referred to

Chu Choon Moi v Ngan Sew Tin [1986] 1 MLJ 34

Elder & Ors v Elder & Watson Ltd (1952) SLT 112; 1952 SC 49

Kong Thai Sawmill (Miri) Sdn Bhd, Re [1978] 2 MLJ 227

PJTV Denson (M) Sdn Bhd & Ors v Roxy (M) Sdn Bhd [1980] 2 MLJ 136

Legislation referred to

Companies Act 1965 ss 132(1), 132C, 181(1)

National Land Code 1965 ss 124, 135, 204A, 204B, 204C

Gan Techiong (*Gan & Lim*) for the petitioner.
Wong Kim Fatt (*Hong Chin Heng* with him) (*Gulam & Wong*) for the respondent.

Mohd Ghazali J: In this action, the petitioner, Dato' Toh Kian Chuan, who is a minority shareholder of the respondent company, complains that the affairs of the company are being conducted in an oppressive manner and hence is seeking relief, pursuant to s 181 of the Companies Act 1965 ('the Act'), to set aside a resolution passed by the company with regard to an agreement for the sale of a piece of land belonging to the company and to set aside the sale and purchase agreement itself. He is also seeking an order that the respondent company be ordered to purchase his shares and that of any other minority shareholder.

The background to his complaint is as follows. The respondent company was incorporated on 10 October 1959 and currently, its authorized share capital is RM20,000,000 divided into 200,000 shares of RM100 each and its paid-up capital is RM14,000,000; its present shareholding structure is as follows:

	Shareholder	No of shares @ RM100
1	Zhuo Investments Pte Ltd	28,996
2	Toh Keng Gee	2,640
3	Toh Keng Tiong	2,640
4	Toh Keng Seng	2,640
5	Fong Cheng Pte Ltd	11,880
6	Toh Kian Chuan	880
7	Pertohsan Pte Ltd	11,320
8	Toh Kian Boon	6,900
9	Toh Boon Chui	8,348
10	Kian Hong Holdings Pte Ltd	63,756
	Total	140,000

In 1966, the respondent company acquired three pieces of land situated in the mukim of Senai/Kulai, in the state of Johor, namely, lot 1955, lot 1033 and lot 2604. However, in 1983, the centre portion of lot 1955 measuring 60 acres was acquired by the state government for the purposes of the Sultan Ismail International Airport, which inevitably caused the remaining portion of the said lot 1955 to be divided into two separate parts of 173.6 acres and 221.9 acres respectively.

In 1991, the respondent company sold the said lot 1033, lot 2604 and that part of lot 1955 with the land area of 173.6 acres, which altogether totalled 506 acres ('the three lots') to Wangsa Idaman Sdn Bhd, a company substantially owned by one Mustapha Buang; the respondent company was thus left with the remaining part of lot 1955 with the land area of 221.9 acres ('the said land'). The said land was subsequently issued with a separate title on 27 October 1991 and is now known as Geran No 40117 lot 27728. A separate title was also issued for the other part of lot 1955

which was sold to Wangsa Idaman Sdn Bhd, namely, Geran No 40118 lot 27729.

Sometime in 1992, Toh Boon Chui ('TBC'), a director of the respondent company, informed the members, including the petitioner, that the said Mustapha Buang was in a position to apply to the state authority for a change of category of land use from 'agriculture' to 'building' and 'industry' and for subdivision of the said land. In return for services rendered in successfully obtaining the said approvals, it was agreed that the respondent company would acquire a company called Lembaran Murni Sdn Bhd ('LMSB'), which would purchase the said land and consequently issue 40% of its shares to Mustapha Buang and his nominees and the remaining 60% to the nominees of the respondent company.

On 15 December 1992, the respondent company entered into an agreement to grant an option to LMSB to purchase the said land ('the option agreement'); it was agreed that in consideration of the sum of RM50,000 paid on that date, the respondent company would grant to LMSB an option to purchase the said land at the price of RM60,000 per acre amounting to RM13,314,000 (RM60,000 x 221.9 acres). It was also agreed that the option shall be valid for a period of six months from 15 December 1992 and that it shall be exercised by LMSB in writing notifying the respondent company of its intention to purchase, accompanied by the sum of RM332,850. Upon the exercise of the option, it was agreed that both parties shall forthwith execute a sale and purchase agreement and that the balance of the purchase consideration shall be payable by LMSB within 30 days from the receipt of approval of the transaction from the Foreign Investment Committee ('FIC'). On 17 December 1992, the respondent company passed a resolution to sell the said land to LMSB at the said price of RM13,314,000.

On 30 December 1992, Mustapha Buang and his nominee, one Haji Abdul Hamid Mohd Nor ('the first party') and five nominees of the respondent company ('the second party') entered into an agreement ('the shareholders agreement'), wherein both parties agreed to enter into a joint venture to acquire and develop the said land and to jointly incorporate or acquire a company for that purpose. Clause 2.2 provides that upon its incorporation, the parties undertake to subscribe for 250,000 shares in the capital of that company in the following proportions, namely:

The first party — 40%

(1)	Mustapha Buang	— 50,000 shares
(2)	Haji Abdul Hamid Mohd Nor	— 50,000 shares

The second party — 60%

(1)	Dato' Haji Mustapha Ahmad	— 37,500 shares
(2)	Abdul Karim bin Mohd Amin	— 37,500 shares
(3)	Dato' Michael Yu Wen Chieh	— 25,000 shares
(4)	Cher Kai Guan	— 25,000 shares
(5)	Toh Wing Yew	— 25,000 shares

Clause 4 of the shareholders agreement provides:

A (a) The company shall immediately upon incorporation acquire an option to purchase the said land from the owners thereof (hereinafter referred to as 'the said option') upon the terms as contained in the draft option annexed hereto for the purposes of development for investment as aforesaid in cl 1.1.

B (b) The first party hereby agrees and undertakes to apply on behalf of the company and successfully obtain approval from the relevant authorities for —

(i) a change in the category of land use from the present category of 'agriculture' to that of 'industry' and 'commercial' with an 'in principle' approval within six (6) months from the date of the said option; and

C (ii) subdivision of the said land into sub-parcels in accordance with a layout plan to be agreed to between the parties hereto within eighteen (18) months from the date hereof.

(c) Upon obtaining the aforesaid 'in principle' approval the company shall forthwith exercise the said option.

D (d) In the event that the first party is unable to secure the said 'in principle' approval for the company within the time stipulated the second party shall be entitled to rescind this agreement.

On the same date, the respondent company executed a power of attorney appointing LMSB as its attorney to prepare, sign and submit the necessary E applications to the relevant authorities for the necessary approvals. At a meeting of the respondent company held on 5 March 1993, TBC informed the meeting that Mustapha Buang had told him that the approval for the 'conversion' of the said land had been obtained and that he was now waiting for approvals for the layout plan and the subdivision.

F On 6 December 1993, the respondent company entered into an agreement with LMSB to sell the said land to the latter at the said price of RM13,314,000 ('the sale and purchase agreement'). It was also agreed that the said sum of RM50,000 paid under the option agreement shall be deemed to be part payment of the purchase price and that the balance of RM13,264,000 shall be payable in the following manner:

G (i) RM6,000,000 within five months from the date of the sale and purchase agreement; and

(ii) the balance of RM7,264,000 within 12 months from the date of the sale and purchase agreement.

H Clause 3 of the sale and purchase agreement, which relates to 'special conditions', provides that the transaction shall be subject to LMSB obtaining approval from the FIC and that in the event that the approval from the FIC is not obtained within six months from the date of the sale and purchase agreement, the parties are entitled to rescind the agreement; I provision was also made to allow LMSB to request for an extension of time in the eventuality of a delay in obtaining the FIC approval.

However, at an extraordinary general meeting ('EGM') of the respondent company held on 22 August 1994, it was resolved that the sale and purchase agreement (dated 6 December 1993) would be rescinded. But on 30 October 1994, the respondent company issued a notice informing

its members that an EGM would be held on 14 November 1994 to pass a resolution to revive the rescinded sale and purchase agreement and to resolve that TBC 'be and is hereby authorized to negotiate and agree with the purchasers upon the terms and conditions as he may in his absolute discretion deem fit and proper for the revival of the said agreement' and that TBC 'be further authorized solely to sign, execute and deliver any supplemental agreement or such other document as may be necessary in the circumstances'.

Prior to the EGM, by a letter dated 7 November 1994 addressed to all the members of the respondent company, the petitioner informed them that the current market value of the said land was RM34,300,000 and that it was irrational for the respondent company to sell it at RM13,314,000 as agreed earlier. In another letter to all the members, dated 12 November 1994, the petitioner informed them that they had been supplied with misleading facts with regard to the whole transaction and pointed out that since LMSB had failed to exercise the option to purchase the said land, the respondent company was now at liberty to sell it to any other person at its current market value.

At the EGM held on 14 November 1994, both the petitioner and another shareholder, Pertohsan Pte Ltd, who together held 8.714% of the total shareholding of the respondent company, objected through their proxies to the revival of the sale and purchase agreement, but it did not make any impact. The resolution was passed by the rest of the shareholders and hence, the rescinded sale and purchase agreement was revived.

Meanwhile, several letters were exchanged between the petitioner, the respondent company, TBC and also their respective solicitors which, inter alia, contained threats of proposed legal action against one another.

On 13 December 1994, the petitioner filed this petition claiming that the affairs of the respondent company are being conducted in a manner oppressive to a part of the members, including the petitioner, and by this action claims the following reliefs:

(i) that the resolution passed by the respondent company at the EGM held on 14 November 1994 to revive the sale and purchase agreement be set aside;

(ii) that the revived sale and purchase agreement and/or any supplementary agreement which provides for the sale of the said land at below its market price be set aside;

(iii) that all steps taken pursuant to the resolution passed at the said EGM be declared null and void;

(iv) that the respondent company may be ordered to purchase the petitioner's and any minority shareholder's shares in the respondent company at a price to be calculated based on the average of two valuation reports by two reputable public accountants, one each to be appointed by each party;

(v) costs; and

(vi) such other relief and order as the court deems fit.

A The main issue before me is, of course, whether the petitioner has brought himself within the scope of s 181 of the Act, which reads:

(1) Any member or a holder of a debenture of a company or, in the case of a declared company under Part IX, the Minister, may apply to the Court for an order under this section on the ground —

B (a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or

C (b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more members or holders of debentures (including himself).

(2) If on such application the Court is of the opinion that either of those D grounds is established the Court may, with the view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and without prejudice to the generality of the foregoing the order may —

(a) direct or prohibit any act or cancel or vary any transaction or resolution;

E (b) regulate the conduct of the affairs of the company in future;

(c) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;

(d) in the case of a purchase of shares by the company provide for a F reduction accordingly of the company's capital; or

(e) provide that the company be wound up.

From my reading of the petition, I find that the petitioner has confined himself only to the ground under s 181(1)(a) of the Act; he thus has to show that the affairs of the respondent company are being conducted in a G manner oppressive to one or more of the members, including himself.

What are these affairs which, to the petitioner, have been conducted in a manner oppressive to himself and/or to the other members? From my reading of the petition and the affidavits filed in support, his complaints seem to have been triggered by the passing of the resolution at the EGM H held on 14 November 1994 to revive the rescinded sale and purchase agreement, which he claimed was an irrational decision by the members and which he alleged was passed as a result of misleading information supplied by the directors. The petitioner also complained that due to the revival of the rescinded sale and purchase agreement, the value of his shareholding in the respondent company has been diluted as the said land I was sold to LMSB below its market price.

He claimed that in early 1994, he discovered that neither the said Mustapha Buang nor LMSB had ever made any application for change of category of land use and subdivision of the said land whereas, in March 1993, TBC informed the respondent company that Mustapha Buang had

obtained the said approvals. He discovered that the state government had on 22 October 1992 approved an application for the surrender and re-alienation of the said land made by Wangsa Idaman Sdn Bhd as attorney for the respondent company. The question which he raised on this matter is why was there a need to enter into the shareholders agreement on 30 December 1992 wherein the 'first party', namely Mustapha Buang and the said Haji Abdul Hamid Mohd Nor, agree and undertake, on behalf of the joint venture company, to apply and successfully obtain approval from the relevant authorities for change of category of land use and subdivision of the said land when approval for its surrender and re-alienation had already been granted two months earlier.

The petitioner alleged that the approval for surrender and re-alienation of the said land, granted on 22 October 1992 by the authorities, was fraudulently concealed from him and the other members so as to persuade them to appoint nominees and enter into the shareholders agreement. His contention was that there was no necessity to enter into such an agreement as approval had already been given by then. This, he alleged, 'smells of fraud'.

The petitioner claimed that upon discovering the above facts, he informed a director of the respondent company, namely, one Toh Kian Boon, of the revelations but subsequent to that, he was removed from the the board of directors of Kian Kong Holdings Pte Ltd, a major shareholder of the respondent company, on 10 June 1994 due, it seems, to 'differences of opinion' and almost simultaneously, his employment with the respondent company was terminated on 15 June 1994.

The petitioner contended that when the respondent company passed the resolution to rescind the sale and purchase agreement at its EGM on 22 August 1994, it was at liberty to sell the said land to any other person at its market price and hence there was no reason to revive it, ie, to sell the said land to LMSB at the price of RM13,314,000. He then claimed that 'it came to his knowledge' that on 23 August 1994, Messrs Gan & Lim, a firm of solicitors, on behalf of an interested party, had written to the respondent company offering to purchase the said land for RM29,168,133 subject to the same terms and conditions of the rescinded sale and purchase agreement. However, TBC, on behalf of the respondent company, replied that the interested party should negotiate directly with Wangsa Idaman Sdn Bhd. According to the petitioner that reply was most puzzling as the respondent company was still at that time the registered proprietor of the said land; that letter from the respondent company ('exh TKC 11'), dated 8 September 1994 and addressed to Messrs Gan & Lim and signed by TBC as managing director, reads:

> We thank you for your letter dated 23 August 1994 informing us that you act for parties that have interest to purchase to the above at RM29,168,133 upon the category 'industry'.
>
> Please let us know whether you are acting for Dato' Toh Kim Chuan and/ or Pertohsan Pte Ltd.
>
> If you are, the facts have been made known to Dato' and Datin Toh Kim Chuan as well as to your Mr Gan Kim Sing and your Mr Gan Techiong.
>
> Wangsa Idaman Sdn Bhd of Suite 311A, Tingkat 3A, Jalan Wong Ah Fook, 80000 Johor Bahru have obtained the approval for the category 'industry'. If your clients wishes to buy, please negotiate directly with them.

To support his claim that the market value of the said land had increased at the time when the sale and purchase agreement was rescinded, the petitioner produced a copy of a valuation report ('exh TKC 12') prepared by a firm of registered valuers on his instructions and at his own expense which was of the view that the value of the said land as at 5 September 1994 was in the region of RM34,300,000. He complained that in spite of being informed that the value of the said land was then RM34,300,000, the members resolved to revive the rescinded sale and purchase agreement and on top of that, also authorized TBC to negotiate and agree with LMSB 'upon the terms and conditions as he may in his absolute discretion deem fit' and to enter into any supplemental agreement as may be necessary; with regard to this, the petitioner pointed out that TBC is a director of both the respondent company and LMSB. He alleged that TBC also informed the members 'to act now' as there was a likelihood that the government may acquire the said land and that without the auspices of the said Mustapha Buang, the respondent company would not be able to apply successfully for change of category of land use and subdivision.

The petitioner also claimed that on 12 November 1994, that is, two days before the EGM, he was informed by solicitors acting for both Mustapha Buang and LMSB that LMSB had received an offer from a third party who was willing to purchase the said land for a sum of RM35,000,000, and that on 18 November 1994 TBC informed him that LMSB had received an offer for the purchase of its shares at RM41,000,000.

He then alleged that the members of the respondent company seem to have been influenced by its directors who had repeatedly informed them that the government might acquire the said land and/or cancel the 'conversion', which he insisted was misleading as no application for 'conversion' and subdivision had been made by Mustapha Buang or LMSB. He also alleged that the directors seem to have convinced the members that unless the sale and purchase agreement was revived, the respondent company would be sued by Mustapha Buang or LMSB which he argued could not hold water as it was Wangsa Idaman Sdn Bhd as attorney for the respondent company which made the application for surrender and re-alienation of the said land and not those two persons. He claimed that following his objections in writing which he circulated to the members, the respondent company's solicitors had threatened to sue him for damages.

The petitioner claimed that the above circumstances show that the affairs of the respondent company were being conducted in a manner oppressive to a part of the members of the company, including himself.

In reply, TBC, on behalf of the respondent company, contended that the petitioner failed to disclose fully and frankly all the facts. He stated that the petitioner failed to disclose that he was a director of the respondent company from January 1968 to December 1983 and that he was also the chief executive of the respondent company from 1985 until June 1994 when he was removed. He contended that as chief executive, the petitioner was privy to every action of the company; he was conducting the affairs of the company and being the chief executive, was privy to the transaction in question and had also participated in the meetings of the company leading

to the application for the 'conversion' of the said land. He stated that the petitioner, who is a member of both the respondent company and LMSB, was also privy to the sale of the said land to LMSB in its unconverted original category of land use of 'agriculture' for the sum of RM13,314,000.

To support his stand that the petitioner was fully aware of the transaction from the outset, he produced a copy of the minutes of the EGM of the respondent company held on 17 December 1992 ('exh TBC 1') wherein it was resolved that the said land be sold to LMSB at RM60,000 per acre (or the total price of RM13,314,000); he pointed out that the minutes show that the EGM was chaired by the petitioner himself.

TBC also produced a copy of the minutes of a meeting of LMSB held on 29 November 1993 ('exh TBC 2') where the petitioner, as member of LMSB, participated in that meeting and wherein it was resolved that LMSB was to purchase the said land for RM13,314,000 from the respondent company. He added that the petitioner had earlier on also participated in the meeting of the respondent company held on 14 June 1991 wherein it was agreed that the three lots be sold to Wangsa Idaman Sdn Bhd.

He contended that the petitioner had personally conducted or had knowledge of the shareholders agreement wherein the following was agreed, namely:

(a) that Mustapha Buang and/or his servant or agent or representative will obtain the 'conversion' of the said land;

(b) that Mustapha Buang or his nominee will be paid 40% of the enhanced value of the said land after its 'conversion' to the category of land use of 'industry';

(c) that the incorporation of LMSB was to carry out the respondent company's obligation to Mustapha Buang;

(d) that 40% of the paid-up capital of LMSB will be allotted to Mustapha Buang or his nominee and that 60% of the paid-up capital of LMSB will be allotted to the shareholders of the respondent company;

(e) the arrangement that the said land be sold to LMSB in its original category of land use of 'agriculture' for RM13,314,000; and

(f) the arrangement that LMSB resell the said land to a third party at market value after its 'conversion'.

As to why the sale and purchase agreement had to be rescinded, TBC explained that when one of the nominee shareholders of the respondent company, namely, one Dato' Haji Mustapha Ahmad passed away in 1993, the petitioner took the deceased's place as nominee but subsequently a dispute arose as the petitioner and certain nominees refused to acknowledge that the shares they held in LMSB were held on trust or as nominees on behalf of the respondent company and not as beneficial owners. Because of this dispute, it was agreed between Mustapha Buang and the respondent company 'that the said agreement be rescinded and a new vehicle be employed to achieve the parties' intention and proceed with the sale and purchase of the said land' and this, he said, was the reason why the

respondent company held the EGM on 22 August 1994 to rescind the sale and purchase agreement.

He then stated that the rescinded sale and purchase agreement was however revived as the petitioner and those nominees subsequently changed their stand and that prior to the EGM held on 14 November 1994, the petitioner acknowledged that he held the shares of LMSB on trust and as nominee of the respondent company and because of that development, the respondent company felt that it was not feasible to employ another vehicle to carry out the sale of the said land and thought it fit and proper to revive the rescinded agreement.

TBC then alleged that the real grievance of the petitioner was his non-election to the board of Kian Hong Holdings Pte Ltd, which is the parent company of all the family companies and also his subsequent removal as chief executive of the respondent company. He contended that before his said non-election and removal, the petitioner had never questioned the transaction between the respondent company, Mustapha Buang and LMSB. TBC alleged that the petition was presented in bad faith largely due to a family dispute between the petitioner and the other members of the respondent company with regard to some funds being utilized by the petitioner from one of the family companies.

In reply, the petitioner contended that TBC's answer confirmed that a fraudulent act had been committed against the respondent company and that the said resolution passed by the majority shareholders to revive the rescinded agreement 'was a blatant attempt to ignore and cover up the fraudulent act'. He alleged that the real reason why the sale and purchase agreement was rescinded was because LMSB was unable to pay the first payment sum of RM6,000,000 within five months from the date of the agreement, ie by 6 May 1994. With regard to the shares that he was holding as nominee, the petitioner argued that it was of no relevance as he himself had acknowledged in writing to the respondent company on 8 April 1993 that he was holding the said shares as attorney on behalf of the said deceased nominee of the respondent company.

He insisted that the fact that the approval for surrender and re-alienation of the said land had been granted on 22 October 1992 was fraudulently concealed from him and the other shareholders and that the shareholders agreement made on 30 December 1992 which provided for the obtaining of an approval for change of category of land use and subdivision which had actually been approved two months earlier 'smells of fraud' and that TBC and the other directors could have known of the approval then but for reasons best known to them, concealed that fact from him. The petitioner also contended that because the said land was adjacent to the State Economic Development Corporation's industrial estate, it was no 'miracle' to obtain the said approval for surrender and re-alienation.

With regard to the dilution in the value of his shareholdings, he contended that he would receive 40% less than that which he was entitled to as a shareholder of the respondent company if the sale and purchase agreement were revived and enforced and argued that both the respondent

company and LMSB would lose money because the double transaction would attract two payments of real property gains tax. Furthermore by selling the said land at below market price the respondent company would stand to lose. In conclusion, the petitioner stated that the deliberate action of the majority shareholders at the behest of the directors to cause the respondent company to suffer a loss in order to cover up the fraudulent act committed against the respondent company 'is something oppressive to a minority shareholder like me'.

From my reading of the circumstances forwarded by the petitioner, the oppression that he was complaining about seems to relate more towards the directors of the respondent company rather than towards the affairs of the respondent company itself. From the facts, I gather that the petitioner and a few directors and shareholders of the respondent company are from the same family. The petitioner has contended that the respondent company in essence is managed by three directors, namely, TBC, the said Toh Kian Boon and one Toh Keng Gee. He claimed that he played a significant role in the respondent company for over 30 years and that he had continued to serve the company until his employment was terminated on 15 June 1994. In his affidavit in support of the petition, he did not specifically state that he was its chief executive and had chaired several meetings relating to the transaction over the said land but only said so when TBC alleged in his affidavit that he had failed to disclose 'fully and frankly' all the facts. In reply, the petitioner explained that being the elder brother of the family, he was invited to chair most of the meetings but contended that 'he believed that he was only informed of the facts that they wish to let him know'.

As stated earlier, what needs to be determined by the court is whether the petitioner has brought himself within the scope of s 181(1) of the Act. What is the scope of s 181(1)? In *The Law of Company Liquidation* by J O'Donovan (3rd Ed), which was referred to in the submission of counsel for the respondent company, the learned author said (at pp 141–142) that relief under s 320 of the Australian Companies Act (which is the equivalent of s 181 of our Act) is available to any member of a company who complains that its affairs are being conducted in a manner which is oppressive to one or more of the members, including himself and that the second requirement is that it must be the affairs of the company itself which are conducted in an oppressive manner. The learned author then went on to say (at pp 143–144):

> It has frequently been stressed that s 320 is not intended to provide minority shareholders with a means of stultifying the voting power of the majority: ...
>
> The mere use of voting power at board meetings or at a general meeting to secure the passing of resolutions which the other members of the board or shareholders oppose, would not in general constitute oppression for the purpose of the section or for any other purpose. For a petition to succeed it must be shown that there has been oppression in a real sense of members qua shareholders, and not merely a subordination of their wishes to the power of the voting majority (*Re Harmer Ltd* [1959] 1 WLR 62 at p 87 per Romer LJ.

A Hence, it does not constitute oppression for those in control to insist upon the adoption of a policy on a matter of business on which there may be legitimate differences of opinion, nor is it oppression if an existing state of inequality results from the provisions of the constitution of the company and not from any action on the part of those in control.

The word 'oppressive' was defined in *Re Harmer Ltd* (referred to above) B to mean 'burdensome, harsh and wrongful'.

In *Elder & Ors v Elder & Watson Ltd* (1952) SLT 112, with regard to the phrase 'oppressive to some part of the members' found in s 210 of the English Companies Act 1948 (which is the equivalent of s 181 of our Act), Lord President (Cooper) said (at p 113):

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> ... the essence of the matter seems to be that the conduct complained of should at the lowest involve a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely. This, broadly speaking, was the class of case which the draftsman of s 210 evidently had in mind, and the question is whether the petitioners have D brought themselves within the scope of the section.

At p 116 of the same case, Lord Keith said:

> It is not lack of confidence between shareholders *per se* that brings s 210 into play, but lack of confidence springing from oppression of a minority by a E majority in the management of the company's affairs, and oppression involves, I think, at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder;

and at the same page further said:

> The company's affairs must be conducted in a manner oppressive to some F part of the members and that connotes to my mind an abuse of power by some person or persons controlling the company and resulting in injury to the rights of some part of its members.

In *Re Kong Thai Sawmill (Miri) Sdn Bhd* [1978] 2 MLJ 227, Lord Wilberforce said (at p 229):

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> The Malaysian section, on the other hand, requires (under sub-s 1(a)) a finding of 'oppression' or 'disregard', and then leaves to the court a wide discretion as to the relief which it may grant, including among the options that of winding the company up.

In the instant case, the circumstances which the petitioner has contended H are matters which amount to oppression can be summarized as follows:

(1) that TBC had misled the members and the petitioner himself into believing that Mustapha Buang obtained the necessary approvals for change of category of land use and subdivision of the said land in March 1993 whereas the authorities had granted the approval for its I surrender and re-alienation on 22 October 1992 but this fact was withheld from the other members and the petitioner;

(2) that the directors had misled the members with regard to the shareholders agreement dated 12 December 1992 as by then, the

authorities had approved the surrender and re-alienation of the said land;

(3) that the directors had misled the members into believing that if the sale and purchase agreement were not revived, the respondent company would be sued by Mustapha Buang and LMSB and that there was a possibility that the government would acquire the said land or that its 'conversion' might be cancelled;

(4) that the sale of the said land at the price of RM13,314,000 by the respondent company was irrational and had caused a dilution in the value of the petitioner's shareholdings.

With regard to the first complaint, the relevant paragraph of the petition reads:

> 19 Sometime in early 1994, your Petitioner discovered that:
>
> (i) no application for *subdivision* and *change of category* of *land use* of the said land has been made by Lembaran and/or Encik Mustapha bin Buang;
>
> (ii) the state authority has on *22 October 1992* approved an application for the said land to be *surrendered* to the state authority and *re-alienated* subject to numerous conditions;
>
> (iii) an application for surrender and re-alienation of the said land was made together with the other three (3) pieces of land sold to Wangsa Idaman Sdn Bhd mentioned in para 9 hereinabove, namely, Geran No 40118 for lot 27729, Geran No 12207 for lot 1033 and Geran 36138 for lot 2604.

With respect, I find it difficult to accept or believe the petitioner's claim that he only discovered the above facts in early 1994. He said that he discovered that neither Mustapha Buang nor LMSB had ever made any application for change of category of land use and for subdivision of the said land and that the state authority had only approved its surrender and re-alienation based upon an application made by Wangsa Idaman Sdn Bhd which was made together with the three lots sold earlier to that company. The facts clearly show that there was never any application for change of category of land use and subdivision of the said land made by either Mustapha Buang or LMSB and his contention would be correct if it were looked in isolation; there was only an application for the surrender and re-alienation of the said land and that application was made by Wangsa Idaman Sdn Bhd which was the vehicle used by Mustapha Buang/ LMSB to make the said application.

However, could that contention be still correct if the other events were taken into consideration? Before we look into the facts to see whether there are any merits in this particular complaint, a careful perusal of the provisions of the National Land Code 1965 (hereafter referred to as 'the Code') would clear the air surrounding the petitioner's claim. The petitioner has insisted throughout that there was never any application made by either Mustapha Buang nor LMSB for the 'conversion' and subdivision of the said land. He contended that the letter dated 22 October 1992 from the Director of Land and Mines, Johor and addressed to Wangsa Idaman

A Sdn Bhd as attorney was only with regard to an approval for surrender and re-alienation of the said land (together with the three lots sold to that company in 1991), which, if I understand him correctly, are not the same as 'conversion' and subdivision. Looking at the relevant provisions of the Code, I would tend to agree with the petitioner that, on the surface of it, 'conversion' and subdivision are not similar with surrender and re-alienation. B They are dealt with under different provisions of the Code but be that as it may, I am of the view that any application made under either provision, if successful, would tend to achieve the same result.

With regard to 'conversion', s 124 of the Code provides, inter alia, that the proprietor of any alienated land may apply to the state authority C for the alteration of any category of land use to which the land is for the time being subject for the imposition of any category thereon. The word 'conversion' does not appear in that section but I would think that the words 'alteration of any category of land use' would mean the same thing as the word 'conversion' as used or referred to by the parties.

D With regard to subdivision of lands, s 135 of the Code provides that the proprietor of any alienated land held under Registry or Land Office title in continuation of final title may, with the approval of the State Director or Land Administrator respectively, subdivide the land into two or more portions to be held by him under separate titles. According to E Judith E Sihombing in *National Land Code — A Commentary* (at p 715): 'However, land held on qualified title may *not* be subdivided. Restrictions of the 'demarcation' of estate land may also prevent its subdivision.'

The above seems to be the relevant provisions of the Code as far as 'conversion' and subdivision of lands is concerned but how is it different F from 'surrender and re-alienation'? With regard to this, s 204B of the Code provides that the state authority may approve the surrender of any lot or two or more contiguous lots held by the same proprietor on the terms that certain portions of the land comprised therein be immediately re-alienated to the proprietor in different portions and units or in different units. Section 204C of the Code provides that no surrender and re-G alienation shall be approved by the state authority unless, inter alia, that the portions and units of the land to be re-alienated conform in shape, area, measurements, location and intended use with a layout plan approved by the appropriate authority. At p 814 of her book (referred to earlier) Judith E Sihombing says: 'In certain cases of Land Office title surrendered H land may be re-alienated to the former proprietor on qualified title .... On surrender the land becomes state land.'

Section 204A incidentally provides that the above provisions shall not be construed as affecting the continued operation of, inter alia, ss 124 and 135 of the Code.

I Looking at the above provision, I would think that by whatever method a landowner adopts in making his application to the relevant authority, ie whether under ss 124 and 135 or under s 204B, which would of course depend on whether it is a Registry or Land Office title in continuation of final title, the end result would be the same, namely, it

would amount to what has been referred to by the parties as 'conversion' and subdivision. A

That letter from the State Director of Lands and Mines, Johor dated 22 October 1992 ('exh TKC 7') informed Wangsa Idaman Sdn Bhd that the state government had agreed 'in principle' for the three lots referred to earlier which were sold to Wangsa Idaman Sdn Bhd and also the said land to be surrendered and re-alienated in the form of several lots with the category of land use as either 'building' or 'industry' for its development as an 'industrial park'. To me, that letter has the same effect as stating that the state government has agreed 'in principle' to the 'conversion' and subdivision of the said land under ss 124 and 135 of the Code respectively because that would be the end result. That approval for surrender and re-alienation would fulfill Mustapha Buang's obligation under cl 4(b) of the shareholders agreement (referred to earlier). B C

As I have stated earlier, I find it difficult to accept that the petitioner made the above discoveries only in early 1994. I also find that his allegation that that information could have been deliberately withheld from him by the directors of the respondent company cannot be substantiated. The petitioner was employed by the respondent company and was its chief executive from 1985 until his employment was terminated on 15 June 1994. He was also a director of Kian Hong Holdings Pte Ltd with TBC as its managing director. That company is the major shareholder of the respondent company and owns 63,756 shares which would amount to about 45% of its issued paid-up capital. I would think that Kian Hong Holdings Pte Ltd would definitely be interested to know about any major transaction that has been proposed or executed by the respondent company and its progress. As chief executive of the respondent company and as director of Kian Hong Holdings Pte Ltd which is the family holding company, I would have thought that he would surely have access to any information or development which relates to the said land and he himself would surely wish to be kept informed of any progress in the application for 'conversion' and subdivision of the said land. Furthermore, as director of Kian Hong Holdings Pte Ltd, until his term expired on 10 June 1994, he is required under s 132(1) of the Act to use reasonable diligence in the discharge of the duties of his office and he would definitely be failing in his duty to Kian Hong Holdings Pte Ltd if he fails to keep himself abreast on what is happening within the respondent company. D E F G

TBC has produced copies of minutes of the meetings held by the respondent company relating to the transaction and these minutes show that those meetings were chaired by the petitioner himself. With regard to this, the petitioner has countered by saying that being the elder brother in the family, he was invited to chair most of the meetings but that he believed that he was only informed of the facts that they wish to let him know. I find it difficult to accept that deduction. There is also evidence to show that the petitioner is a member of LMSB and that he had participated in a meeting held by that company relating to the purchase of the said land. H I

Incidentally, that letter from the Director of Lands and Mines dated 22 October 1992 refers to Wangsa Idaman Sdn Bhd as attorney for the respondent company but whether Wangsa Idaman Sdn Bhd was appointed as attorney prior to that application for surrender and re-alienation is not clear — the evidence only shows LMSB being appointed as attorney for the respondent company on 30 December 1992. That letter from the Director of Lands and Mines reads:

> Pengarah Urusan
>
> (a) Swee Construction and Transport Company Sdn Bhd
>
> (b) Wangsa Idaman Sdn Bhd
>
> Melalui: Wangsa Idaman Sdn Bhd
> 15th Floor Menara SMI
> 6, Lorong P Ramlee
> 50250 Kuala Lumpur
>
> Permohonan serahbalik & Kurniasemula
> Bagi Tujuan Perumahan & Lain-lain:
>
> Oleh: (a) Swee Construction & Transport Company Sdn Bhd
> (b) Wangsa Idaman Sdn Bhd Melalui:
> Wangsa Idaman Sdn Bhd sebagai
> Pemegang P/A
>
> Untuk Lot: Lot 27728, 27729, 1033, 2604
> G 40117 & 40118, G 12207, G 36138
> 728E 1R 30P.
>
> Mukim : Senai/Kulai
> Daerah : Johor Bahru
> Nama Taman : 'Senai Industrial Park'
>
> 1 Adalah dimaklumkan kerajaan negeri telah pun bersetuju tanah-tanah yang tersebut di atas diserah balik kepada kerajaan dan dikurniakan semula kepada tuan-tuanpunya tanah:
>
> (a) Swee Construction & Transport Company Sdn Bhd,
>
> (b) Wangsa Idaman Sdn Bhd, Melalui Wangsa Idaman Sdn Bhd, sebagai Pemegang P/A dalam bentuk bidang-bidang kecil seperti berikut ...

With regard to that letter, the petitioner has pointed out that the approval for surrender and re-alienation was granted for the three lots and also the said land as can be seen from the caption of the letter wherein reference was made to its grant and lot number, namely, Geran 40117 Lot 27728. With regard to this contention, the general manager of Wangsa Idaman Sdn Bhd has filed an affidavit to explain that that company is owned substantially by Mustapha Buang and that when he prepared the application for surrender and re-alienation of the three lots which they had earlier bought from the respondent company, has was instructed by Mustapha Buang or Wangsa Idaman Sdn Bhd and LMSB to include the said land in the application as Mustapha Buang was still negotiating to purchase the

said land from the respondent company; thus when the State Director of Lands and Mines approved 'in principle' Wangsa Idaman's application, it had also included the said land. A

A further letter from the State Director of Lands and Mines dated 10 March 1994 ('exh TKC 8') and addressed to the respondent company through Wangsa Idaman Sdn Bhd as attorney was also introduced in evidence. That letter also confirmed that the state government had approved 'in principle' the second stage of the application for surrender and re-alienation of the said land and the layout plan which was submitted together with the application. The general manager of Wangsa Idaman also produced several letters to show that he had to submit several documents pertaining to his proposals over the said land before his application was approved on 10 March 1994 and that he finally paid the fees imposed by the state government sometime in August 1994. According to him, it was a long and cumbersome process and required constant monitoring. B C

Looking at both the said letters and the affidavit of the general manager of Wangsa Idaman Sdn Bhd, I would tend to accept the explanation given by him and as I have stated earlier, I find it difficult to accept the petitioner's contention that he only discovered in early 1994 that neither Mustapha Buang nor LMSB had ever made any application for the 'conversion' and subdivision of the said land. The evidence show that the application for the necessary approvals was left to Wangsa Idaman Sdn Bhd and all that is required of the petitioner, as chief executive of the respondent company, was to request Mustapha Buang or LMSB for a progress report on the development of the undertaking by LMSB to get the said land 'converted' and subdivided. On the whole, I cannot see any merits in his contention that he was not aware of the various approvals which Wangsa Idaman Sdn Bhd obtained in 1992/1993 over the said land. D E F

The second complaint made by the petitioner was with regard to the shareholders agreement, dated 30 December 1992, wherein Mustapha Buang and his nominee and nominees of the respondent company agreed to acquire or incorporate a company, which under the circumstances would be LMSB, for the purpose of developing the said land on a joint venture basis and wherein Mustapha Buang and his nominee undertook to apply for change of category of land use and subdivision of the said land. That agreement was, of course, subject to LMSB purchasing the said land and hence must be read together with the option agreement referred to earlier wherein the respondent company granted an option to LMSB to purchase the said land. G H

The petitioner had, however, contended that there was no necessity for the respondent company to enter into the shareholders agreement as the relevant authorities had by then, ie two months earlier, approved its surrender and re-alienation. I cannot see how such a contention can hold water. From my reading, the main objective of the shareholders agreement was to develop the said land on a joint venture basis and both parties to that agreement have agreed that 40% of the shares will be issued to Mustapha Buang and his nominee when they successfully obtain approvals for the 'conversion' and subdivision of the said land. That agreement was I

A subsequently followed by the sale and purchase agreement wherein the respondent company sold the said land to LMSB. It is my view that these three agreements have to be read together in the light of the several matters highlighted by the petitioner, which he contended amount to oppression and cannot be treated in isolation.

B That letter from the State Director for Lands and Mines dated 10 March 1994 seems to confirm that the state government had finally given its approval for the surrender and re-alienation of the said land, and to me, that approval has the same effect as an approval for change of category of land use and subdivision of the said land although the provisions are not similar, as discussed earlier. It is my view that the shareholders agreement C merely formalized what had been agreed to by both Mustapha Buang and the respondent company and hence the fact that Wangsa Idaman Sdn Bhd, acting under instructions of Mustapha Buang, had by then obtained approval 'in principle' for the surrender and re-alienation of the said land in October 1992 would be irrelevant under the circumstances; that was only an approval D 'in principle' and was not a final approval whereas the final approval would seem to be contained in that letter dated 10 March 1994 referred to above.

Under the circumstances, I cannot see how the contention of the petitioner that the members of the respondent company, including himself, had been misled by the directors to agree to the signing of the shareholders E agreement and that the circumstances above 'smell of fraud' can stand at all. In his submission, counsel for the respondent company objected to the allegation of fraud on the ground that it was never pleaded. Notwithstanding that it was never pleaded, I have considered this allegation of fraud and find that it contains no merits. The law is that he who alleges fraud must F clearly and distinctly prove it and a general allegation of fraud is insufficient. In *Chu Choon Moi v Ngan Sew Tin* [1986] 1 MLJ 34, Syed Agil Barakbah SCJ said (at p 38):

> We agree that fraud whether made in civil or criminal proceedings must be proved beyond reasonable doubt and cannot be based on suspicion and conjecture (*Narayanan v Official Assignee, Rangoon* AIR 1941 PC 93; *Saminathan v Pappa* [1981] 1 MLJ 121). Proof beyond reasonable doubt G does not mean proof beyond the shadow of doubt. The degree of proof need not reach certainty but it must carry a high degree of probability. What it means is that evidence adduced is such that the court believes its existence probable in the circumstances of the particular case. If such proof extends only to a possibility, then it falls short of proving beyond reasonable doubt.

H

As to what constitutes fraud, Raja Azlan Shah CJ (Malaya) (as he then was), in the case of *PJTV Denson (M) Sdn Bhd & Ors v Roxy (M) Sdn Bhd* [1980] 2 MLJ 136 said (at p 138):

I

> Whether fraud exists is a question of fact, to be decided upon the circumstances of each particular case. Decided cases are only illustrative of fraud. Fraud must mean 'actual fraud, ie dishonesty of some sort' for which the registered proprietor is a party or privy .... Thus in *Waimiha Sawmilling Co Ltd v Waione Timber Co Ltd* [1926] AC 101 at p 106, it was said that 'if the designed object of a transfer be to cheat a man of a known existing right, that is fraudulent ....

I find that the petitioner has failed to forward any sufficient particulars of fraud or if there were any, there was a general vagueness in the evidence relating to the fraud which actually took place. A

The petitioner's third complaint was that the directors of the respondent company had misled the members, including himself, into believing that if the sale and purchase agreement were not revived, the respondent company would be sued by Mustapha Buang and LMSB and that the government might acquire the said land or that its 'conversion' might be cancelled. He contended that this information is misleading as LMSB itself never made any such application and that it was Wangsa Idaman Sdn Bhd which successfully obtained the necessary approvals and as such he argued that the claim by TBC that the respondent would be faced with legal suits from Mustapha Buang and LMSB if the said agreement were not revived cannot stand. B C

As to whether Mustapha Buang and/or LMSB would be in a position to sue the respondent company after the sale and purchase agreement was rescinded would be difficult to determine at this stage but it must be noted that Wangsa Idaman Sdn Bhd, according to its general manager, is a company substantially owned by Mustapha Buang. Although it was LMSB that undertook to make the necessary applications to the relevant authorities for the 'conversion' and subdivision, I cannot see anything irregular or even fraudulent for Mustapha Buang or even LMSB to use Wangsa Idaman Sdn Bhd as a vehicle to make the necessary applications on behalf of LMSB. D E

As to why the directors of the respondent company informed the members that the government might acquire the said land escapes me. No evidence had been introduced to show that there was a possibility that this might happen. As to the cancellation of the approvals, the possibility was always there if one reads the contents of the said two letters from the State Director of Lands and Mines. The first letter imposed several conditions and stated that if the applicant agreed to those conditions, they must reply within two weeks and also sign an agreement which would be forwarded to them by the District Land Administrator, Johor Bahru and that if there were non-compliance, the application would be cancelled and that if the applicant made another application after six months, it would be treated as a fresh application. The position was also similar with regard to the second letter. F G

Under the circumstances, I do not think that the directors had misled the members when they intimated to them of that possibility arising in the eventuality the sale and purchase agreement was not revived. The approval given by the authorities was subject to several conditions and there was always the possibility of its cancellation and I do not think that the directors have deliberately capitalized on that possibility with the intention of putting fear into the minds of the members so as to induce them to agree to the revival of the sale and purchase agreement. H I

I am also of the view that there are no merits in the petitioner's fourth complaint, namely, that the respondent company had made an irrational

decision when it revived the rescinded sale and purchase agreement which has subsequently caused a dilution in the value of the shares held by the petitioner and other minority shareholders.

The petitioner contended that when the sale and purchase agreement was rescinded, the respondent company was at liberty to sell it to any party at its market value which had increased by then. He suggested in his affidavit that all that need to be done, to be fair, was to 'reimburse Wangsa Idaman Sdn Bhd for having submitted in its application the said land together with the other three pieces which they purchased from the company — on a pro-rata basis.' With respect, I do not think it is as simple as that. It was not the respondent company but Mustapha Buang which 'engaged the services' of Wangsa Idaman Sdn Bhd to make the necessary application.

I think the issue here is whether it was wrong for the respondent company to revive the rescinded agreement. It is of course not disputed by either party that at the EGM held on 14 November 1994, the resolution to revive the rescinded sale and purchase agreement was passed by the majority of the members and the effect of that resolution would be that the respondent company will be selling the said land to LMSB at its old price of RM13,314,000, that is, at the price when the category of land use was still 'agriculture'. In my opinion, and based upon the valuation report furnished by the petitioner ('exh TKC 12'), when fresh titles are issued by the authorities for the subdivided lots with the category of land use of 'industry' or 'building', the indirect shareholding of the petitioner and other shareholders of the respondent company in LMSB will accordingly increase in value. In what way the value of the petitioner's shares in the respondent company will be diluted, as contended by him, escapes me.

In his second affidavit in reply ('encl 21'), the petitioner posed a question, namely, 'Is the company bound to sell the said land at only about RM13.4m and cause a significant and immediate loss to the capital value of the company's assets?' Within the same context, counsel for the petitioner submitted that the directors and majority shareholders of the respondent company passed the said resolution to dissipate/give away 40% of the value of the said land to LMSB by selling the said land which was worth RM41,000,000 for the sum of RM13,314,000 thereby causing the respondent company to lose about RM9.8m (based upon his calculations).

Even if the above contention is correct, which I think it is not, I cannot see anything irregular or wrongful about that — s 132C of the Act allows directors of a company to carry into effect any proposal or execute any transaction for, inter alia, the disposal of a substantial portion of the company's undertaking which would *materially and adversely* affect the financial position of the company as long as the proposal or transaction has been approved by the company in general meeting. They may have their reasons for doing so, and unless fraud is established, I do not think that it is the duty of the courts to inquire into its rationality.

As discussed earlier, TBC has explained why the sale and purchase agreement need to be revived and the majority shareholders of the respondent company have passed the resolution. Furthermore when the

respondent company resolved to revive the rescinded sale and purchase agreement, which would imply that the members have accepted the explanation given by the directors as to why the agreement need to be revived, that would denote that it has waived any earlier breach of contract including the failure of LMSB to make the first payment of RM6,000,000 within the prescribed time; the reason for its rescission would be of no relevance now. The members were clearly aware of the effect of having the sale and purchase agreement revived and six of them have affirmed in their affidavits that they voted in favour of the said resolution with their eyes open. These members have stated that they were never misled by TBC and that they were kept well-informed by TBC on any matter relating to the said land and that they fully understood that Mustapha Buang was to procure the 'conversion' of the said land in return for a 40% benefit and that LMSB was to be used as a vehicle for achieving the objective of the respondent company and Mustapha Buang.

Furthermore, I do not think that the petitioner can base his claim on the difference in price of the said land as per his valuation report which I find was based on category of land use of 'industry' or 'building' as opposed to its sale price between the respondent company and LMSB which was based on its unconverted category of land use of 'agriculture'. That valuation report ('exh TKC 12') states that the said land has been approved for development, hence implying that the land has been valued based upon the category of land use of 'industry' or 'building'; p 7 of the report reads:

> Our verbal enquiries at the Johor State Town and Country Planning Department revealed that the subject property is approved for the following development:
>
> | *Property Type* | *No of Plots* |
> |---|---|
> | Hitech | 13 |
> | Medium industry | 13 |
> | Detached factories | 58 |
> | Semi-detached factories | 42 |
> | Terrace factories | 50 |
> | Total | 176 |
>
> We were also informed by the same department that application for earthwork has just been submitted.

Page 8 of the report reads:

> Our investigations revealed that similar lands in the locality are currently being transacted/listed from RM296,525 to RM370,656 per hectare (RM120,000 to RM150,000 per acre) depending upon its location, accessibility, size and planning control among other pertinent factors. In particular, we noted that the nearby Senai Industrial Park sited on Lot Nos 1033, 2604 and 27729 with a total land area of approximately 204.844 hectares (506.177 acres) was transacted on 11 October 1993 at RM74.5 million or RM363,693 per hectare (RM147,182 per acre).

Looking at that report, I would think that it would be inequitable on the part of the petitioner to imply that the market value of the said land has increased tremendously when his figures are based upon different categories of land use.

For the petitioner to succeed in his application for the said reliefs, he must show the following, namely:

(i) that it is the affairs of the respondent company itself which are conducted in an oppressive manner; and

(ii) that the respondent company has oppressed the minority shareholders including himself.

On the whole, I am of the view that the circumstances and matters complained of by the petitioner do not at all denote that there was oppression within the meaning of s 181(1) of the Act. There is nothing to show that the respondent company's actions complained of were designed to injure the petitioner in his rights as a member. The petitioner was privy to the whole transaction from day one, ie from the day the three lots were sold to Wangsa Idaman Sdn Bhd and the negotiations and agreements which ensued after TBC informed the respondent company that Mustapha Buang was in a position to get the said land 'converted' and subdivided for the purpose of developing it into an industrial estate right up to his termination as chief executive of the respondent company. He is a member of both the respondent company and LMSB and there is evidence to show that he was aware of the arrangement made between the respondent company and Mustapha Buang who was using Wangsa Idaman Sdn Bhd as a vehicle for the 'conversion' and subdivision of the said land. His contention that the approval was only with regard to surrender and re-alienation and not by way of 'conversion' and subdivision has no bearing upon his complaint at all as the end result was the same, ie the state government has agreed to the surrender and re-alienation of the said land in the form of several units with the category of land use of 'building' and 'industry'.

The circumstances forwarded by both parties do not even disclose that there was a difference in opinion as to the management of the respondent company between the petitioner and its directors. To me, the circumstances only disclose that something was amiss in the relationship between the petitioner and some of the directors, especially TBC, which was then aggravated by the non-election of the petitioner to the board of Kian Hong Holdings Pte Ltd, which is the major shareholder of the respondent company and the termination of his employment as chief executive. These circumstances seem to be the starting point of his grievances which led him to file this petition. It has been held in *Elder & Ors v Elder & Watson Ltd* (1952) SLT 112 that any oppression suffered by a member as a director or employee of a company is not oppression within the context of the section. In that case, a petition at the instance of five shareholders disclosed differences of opinion between the first petitioner who was a director and a fellow director, removal or exclusion from office of the first and second petitioners as directors, and forced retirement or dismissal from employment of the first and second petitioners as secretary and factory manager respectively, and rejection of an offer of the same

petitioners to sell their shareholdings to the board of directors. It was held that three of the petitioners had suffered no apparent prejudice or 'oppression', and that so far as the first and second petitioners were concerned, any oppression which they might have suffered had been suffered by them as directors and officers of the company, and not in their characters as members thereof as required by s 210 (which is the equivalent of s 181 of our Act). I think the position is the same in the instant case.

On the whole, I cannot find anything to suggest that the respondent company is not being conducted efficiently by the existing board of directors in the interests of the members and neither do I find any violation of the conditions of fair play or any abuse of power being committed by the directors of the respondent company which could amount to oppression. I cannot also see how the revival of the rescinded sale and purchase agreement, which was objected to by the petitioner and another minority shareholder, who incidentally, is not a party to these proceedings, can amount to oppression when the resolution was passed by a majority of the members. Oppression must be in the form of dishonesty and in the instant case, I cannot find any. The petitioner has also failed to satisfy me that the resolution to revive the rescinded agreement is not bona fide for the benefit of the respondent company as a whole.

The petitioner has also failed to prove that the directors have acted in disregard of his interest. Upon its 'conversion', the value of the said land, which will be re-alienated in several units, will definitely enhance in value. Unless the petitioner can prove that there was dishonesty or fraud on the part of the respondent company and its directors when the three agreements were entered into, or when the sale and purchase agreement was revived, I think his application for the said reliefs must fail. In considering this petition, I have looked at the alleged acts of oppression as a whole, and not in isolation; and I cannot see any lack of probity and fair dealing in the affairs of the respondent company, whether by its directors and/or the majority shareholders, which would amount to oppression within the context of s 181(1) of the Act. There is also no evidence that the value of his shares in the respondent company will be diluted. That being so, I have come to the conclusion that the petitioner has failed to prove that the affairs of the respondent company are being conducted in a manner oppressive to some of the shareholders, including himself, and I therefore dismiss this petition with costs.

Petition dismissed.

Reported by Kevin Ooi